

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE L. RUFFLEY and U.S. POSTAL SERVICE,
POST OFFICE, New Castle, PA

*Docket No. 99-2455; Submitted on the Record;
Issued April 11, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs, in its decision of May 4, 1999, properly denied modification of its decision terminating appellant's benefits as of September 15, 1996.

On September 24, 1984 appellant, then a 31-year-old letter sorting machine operator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that, on September 23, 1984, while lifting a plastic bin as part of her federal employment, she sustained an injury at the base of her neck and her middle back. Her claim was initially accepted by the Office for second cervical and fourth thoracic subluxation; cervical strain/sprain; cervical neuralgia; brachial radiculitis and thoracic sprain/strain. Initially, appellant lost no time from work due to this injury, but on April 15, 1987 she sustained a recurrence of disability and did not work from April 15 through November 21, 1987. She returned to work for four hours per day from November 22, 1987 through March 21, 1988. At that time appellant suffered another recurrence and again stopped working.

On June 22, 1996 the Office issued a notice of proposed termination of compensation based on the weight of the medical evidence and specifically on Dr. Lehman's report of August 22, 1995 that appellant no longer suffered any residuals from her work injury.

In response appellant submitted further evidence, including a July 16, 1996 medical report by her chiropractor, Dr. Kevin Moore, wherein he opined that appellant remained disabled. However, in a decision dated August 26, 1996, the Office terminated benefits effective September 15, 1996. In its decision, the Office noted that appellant's treating chiropractor, Dr. Moore, advised that appellant remained totally disabled due to chronic fibromyositis and myofascial pain syndrome that he related to the 1984 work injury. The Office had previously noted that Dr. Lloyd K. Richless, to whom the Office referred appellant for a second opinion, found that appellant was able to return to work in a light to medium capacity for eight hours a day. As a conflict in the evidence existed, the Office referred appellant to Dr. John W. Lehman,

a Board-certified orthopedic surgeon, for an independent medical examination. In a report dated August 22, 1995, he opined that appellant had chronic cervical and low back pain secondary to her posture and deconditioning and that he did not believe that at the present time this could be considered solely related to her work injury of 1984 from which she had recovered. Dr. Lehman opined that her present condition was due to her inactivity and lack of strengthening and that she was capable of returning to work without any restrictions, including her prior position at the employing establishment. He did not believe that there was any evidence to suggest any residual disability associated with her original injury. Accordingly, the Office terminated benefits effective September 15, 1996.

By letter dated September 19, 1996, appellant requested a hearing. The hearing was held on January 31, 1997, at which time appellant testified that she continues to suffer from severe pain through her neck, back and hips, that she has problems standing, that she has to lay down about 4 to 5 times a day, that she has trouble sleeping, that the pain causes her trouble concentrating and that she has continued to see her chiropractor. She testified that she does not believe that she could return to her job as a sorter.

In a decision dated April 18, 1997, the hearing representative affirmed the decision of the Office terminating benefits. The hearing representative noted that the greatest weight should be given to the impartial medical examiner, *i.e.*, Dr. Lehman and accordingly affirmed the Office's decision terminating benefits.

By letter dated January 29, 1998, appellant again requested reconsideration and submitted further information.

By decision dated March 23, 1998, the Office reviewed appellant's case on the merits and denied her application for modification. The Office noted that none of the new medical reports support that any of appellant's alleged physical problems were caused by the September 23, 1984 work injury and as such, were not sufficient to create a conflict with the opinion of Dr. Lehman.

By letter dated August 30, 1998, appellant again requested modification. At this time, appellant submitted two additional medical reports.

In a medical report dated April 23, 1998, Dr. Milton J. Klein, an osteopath who is Board-certified in physical medicine and rehabilitation, found that appellant suffered from chronic disabling cervical-dorsal myofascial syndrome, right C6 foraminal osteophytic encroachment and bilateral shoulder immobility, more prominent on the right, rule out underlying impingement syndromes of bilateral shoulders. He recommended that appellant undergo further testing, including x-rays and magnetic resonance imaging scans of her shoulders. Dr. Klein further opined that appellant remained permanently and totally disabled from all gainful occupational duties secondary to the multifocal occupational musculoskeletal injuries of September 3, 1984.

Appellant also submitted a medical report dated July 22, 1998, wherein Dr. Moore opined that the development of the C6 spur and subsequent radiculopathy is likely a direct result of a progressive degenerative process initiated with the September 23, 1984 injury. He noted that the radiographic studies of May 30, 1997 showed no other degenerative changes but the

osteophytes and that such a well-developed localized degenerative change is not the result of a generalized degenerative process but rather the reaction to a localized traumatic injury, which by history, can only be the 1984 injury. Dr. Moore noted that cervical spine radiographs taken in his office showed no spur or other degenerative change. He noted that he has consistently identified her primary condition as myofascial syndrome/fibromyalgia and that the statement that her condition was secondary to poor posture and deconditioning ignores the facts of the case and history and the nature of myofascial pain. Dr. Moore stated: "I believe the evidence to be overwhelming that the source of her disability is directly related to the 1984 work injury."

In a decision dated November 18, 1998, the Office again denied reconsideration. The Office found that the medical evidence submitted by appellant consisted of reports submitted by physicians who had treated her in the past and that they merely reiterated the conclusions of Drs. Klein and Moore already in the record. As such, the Office found these reports to be cumulative in nature and of little or no probative value. The Office further noted that both physicians were on one side of the conflict, *i.e.*, opining that appellant remained totally disabled as a result of her September 23, 1984 injury, which necessitated Dr. Lehman resolving the conflict. As such, the Office determined that these reports were insufficient to overcome the opinion of the independent medical examiner.

By letter dated March 19, 1999, appellant again requested reconsideration. No new evidence was submitted at this time.

By decision dated May 4, 1999, the Office denied appellant's request for modification.

The Board finds that the Office acted properly in its May 4, 1999 decision, wherein it reviewed appellant's case on the merits and concluded that modification of its prior decision was denied because the evidence submitted was found to be cumulative, repetitive, irrelevant and insufficient to warrant modification of its prior decision.

There was no new evidence submitted in support of appellant's March 19, 1999 request for reconsideration. Nevertheless, the Office performed an independent review of its prior decision, and properly denied modification. In the instant case, there was an initial conflict in the medical evidence, in that Dr. Moore, appellant's treating physician, opined that appellant remained disabled and Dr. Richless, to whom the Office referred appellant for a second opinion, found that appellant was able to return to work in a light duty to medium capacity. This conflict was resolved by the Office referring appellant to Dr. Lehman for an independent medical examination. He determined that there was no evidence to suggest that appellant's present condition and residual disability was associated with her original injury. When a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based upon factual background, must be given special weight.¹ The Office properly found that Dr. Lehman's opinion was well rationalized and based on a proper factual background and accordingly, terminated benefits effective September 15, 1996. The more recent reports of Drs. Klein and Moore were insufficient to change this result. The Board notes that Dr. Moore was one of the physicians

¹ *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

whose opinion helped to create the conflict that was resolved by Dr. Lehman. As he resolved the conflict in medical opinions, the additional report of Dr. Moore and the supporting report of Dr. Klein, were insufficient to overcome the weight accorded the report of the impartial medical specialist.²

The decision of the Office of Workers' Compensation Programs dated May 4, 1999 is hereby affirmed.³

Dated, Washington, DC
April 11, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

² *Thomas Bauer*, 46 ECAB 257, 265 (1994); *Virginia Davis-Banks*, 44 ECAB 389 (1993).

³ The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal. 20 C.F.R. § 501.3(d). Since appellant filed her appeal on July 29, 1999, the only decisions over which the Board has jurisdiction are the May 4, 1999 and November 18, 1998 decisions denying reconsideration.